

ESTTA Tracking number: **ESTTA768533**

Filing date: **09/02/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

| | | | |
|---------|---|-------------|----------|
| Name | Sazerac Brands, LLC | | |
| Entity | Corporation | Citizenship | Delaware |
| Address | 10400 Linn Station Road, Suite 300 Louisville, KY 40223 UNITED STATES | | |

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| Attorney information | Rebecca Givner-Forbes Cooley LLP 1299 Pennsylvania Ave NW, STE 700 Washington, DC 20004 UNITED STATES rgf@cooley.com, pwillsey@cooley.com, vbadolato@cooley.com, trademarks@cooley.com Phone:202-842-7800 |
|----------------------|--|

Registration Subject to Cancellation

| | | | |
|-----------------|--|-------------------|------------|
| Registration No | 4561192 | Registration date | 07/01/2014 |
| Registrant | SlapShot Brewing LLC 11S476 Rachael Court Willowbrook, IL 60527 UNITED STATES | | |

Goods/Services Subject to Cancellation

Class 032. First Use: 2013/09/04 First Use In Commerce: 2013/09/04
All goods and services in the class are cancelled, namely: Beers

Grounds for Cancellation

| | |
|---|--|
| No use of mark in commerce before application, amendment to allege use, or statement of use was filed | Trademark Act Sections 14(1) and 1(a), (c), and (d) |
| Other | Lack of bona fide intent at filing of underlying application |

| | |
|-------------|---|
| Attachments | Petition to Cancel_SLAPSHOT.pdf(14866 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|-------------------------|
| Signature | /Rebecca Givner-Forbes/ |
| Name | Rebecca Givner-Forbes |
| Date | 09/02/2016 |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 4,561,192
For the Trademark SLAPSHOT
Issued on July 1, 2014

| | | |
|-----------------------|---|------------------|
| SAZERAC BRANDS, LLC |) | |
| |) | |
| Petitioner, |) | |
| |) | Cancellation No. |
| v. |) | |
| |) | |
| SLAPSHOT BREWING LLC, |) | |
| |) | |
| Registrant. |) | |
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PETITION TO CANCEL

Petitioner Sazerac Brands, LLC (“Sazerac”), a Delaware company having its principal place of business at 10400 Linn Station Road, Suite 300, Louisville, Kentucky 40223, believes that it is being damaged and will continue to be damaged by the registration of the SLAPSHOT mark (Registration No. 4,561,192) (the “Subject Registration”) owned by SlapShot Brewing LLC, an Illinois company with a listed address of 11S476 Rachael Court, Willowbrook, Illinois, 60527 (“Registrant”). Sazerac hereby petitions to cancel the Subject Registration under Section 1 of the Trademark Act of 1947, 15 U.S.C. § 1051.

As grounds for cancellation, Sazerac alleges as follows.

The Subject Registration

1. On or around April 4, 2013, Registrant applied to register the SLAPSHOT mark with the U.S. Patent and Trademark Office (“PTO”) in connection with “Beers” in Class 32 on the basis of a bona fide intention to use the subject mark in commerce under Section 1(b) of the Trademark Act.

2. On or around April 29, 2014, Registrant submitted a Statement of Use with supporting evidence of use (“specimens”) to the PTO. In its Statement of Use, Registrant declared that “the applicant or the applicant’s related company or licensee is using the mark in commerce...and the specimen(s) shows that mark as used on or in connection with the goods/services in commerce.” Registrant also asserted a date of first use in commerce of September 4, 2013.

3. Registrant’s specimens consisted of photographs of a tap handle bearing the SLAPSHOT mark and a “hang tag” and sticker, each bearing the SLAPSHOT mark, on a keg.

4. On July 1, 2014, the PTO issued the Subject Registration.

Sazerac and the SLAPSHOT and SLAP SHOT marks

5. Sazerac markets and sells a number of different types and brands of alcoholic beverages and distilled spirits, including vodkas, whiskeys, tequilas, and specialty liqueurs.

6. On November 13, 2015, Sazerac applied to register the marks SLAPSHOT and SLAP SHOT in connection with “alcoholic beverages except beer” in Class 33 on the basis of Sazerac’s bona fide intention to use the subject marks in commerce under Section 1(b) of the Trademark Act (U.S. Serial Nos. 86/819,361 and 86/819,363).

7. On March 2, 2016, the PTO Examining Attorney assigned to review Sazerac’s applications issued non-final refusals to register Sazerac’s marks on the grounds of a likelihood of confusion with the mark identified in the Subject Registration.

8. Sazerac is being damaged and will continue to be damaged by the registration of Registrant’s SLAPSHOT mark.

**FIRST GROUND FOR CANCELLATION
NON-USE**

9. Sazerac incorporates by reference paragraphs 1 through 8 inclusive, as if fully set forth herein.

10. On information and belief, to the extent that Registrant has used the SLAPSHOT mark in commerce, it has done so only in intrastate commerce within the State of Illinois.

11. On information and belief, Registrant had not used the SLAPSHOT mark in commerce, within the meaning of Section 1(a) of the Trademark Act, when Registrant filed its Statement of Use and specimens with the PTO or when the PTO issued the Subject Registration.

12. On information and belief, Registrant's purported specimens of use do not reflect the SLAPSHOT mark in commerce within the meaning of Sections 1(a) and 1(d) of the Trademark Act, but instead show the mark's use within the state of Illinois, only.

13. Because Registrant was not using the SLAPSHOT mark in U.S. commerce at the time that it filed its Statement of Use or at the time the Subject Registration issued, the issuance of the Subject Registration violated 15 U.S.C. § 1051(a).

14. Because Registrant is not currently using the SLAPSHOT mark in U.S. commerce, its continued registration of the SLAPSHOT mark violates 15 U.S.C. § 1051(a).

**SECOND GROUND FOR CANCELLATION
LACK OF BONA FIDE INTENT TO USE**

15. Sazerac incorporates by reference paragraphs 1 through 14 inclusive, as if fully set forth herein.

16. On information and belief, Registrant did not have a bona fide intent, within the meaning of Section 1(b) of the Trademark Act, to use the SLAPSHOT mark in interstate commerce when it filed its application for the SLAPSHOT mark. Accordingly, the application

underlying the Subject Registration was *void ab initio* and on that basis the Subject Registration should be cancelled.

17. For the foregoing reasons, the Subject Registration should be cancelled for violating 15 U.S.C. §§ 1051.

WHEREFORE, based on the foregoing, Sazerac requests that the Trademark Trial and Appeal Board sustain this Petition and cancel Registration No. 4,561,192.

COOLEY LLP

Date: September 2, 2016

By: /Rebecca Givner-Forbes/
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*Attorneys for Petitioner
Sazerac Brands, LLC*

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **PETITION TO CANCEL** has been served on Registrant by mailing said copy on the date set forth below via First Class Mail, postage prepaid, to Registrant's correspondent at the following address of record with the PTO:

Joseph Noonan
Butler Rubin Saltarelli & Boyd LLP
70 W Madison St Suite 1800
Chicago, IL 60602

Date: September 2, 2016

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